

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

VIRGILIA NIEVES-ROSADO, et al.,

Plaintiffs,

v.

PUERTO RICO HIGHWAYS AUTHORITY,  
et al.,

Defendants.

Civil No. 04-2379 (JAF)

**O R D E R**

Plaintiffs, Virgilia Nieves-Rosado, Ramón Nieves, Esther Nieves, Ivette Cao-Romero, David Nieves, Yolanda Nieves, and Roberto Nieves, bring the present action against Defendants, Puerto Rico Highways Authority ("PRHA"), Jesús Rosario Suárez, Minerva Suárez Rodríguez, Rosario Doe, and unnamed insurance companies. Docket Document No. 1. Plaintiffs allege that Defendants negligently designed, constructed, and maintained the Vega Baja intersection of Puerto Rico Highways PR-644 and PR-137, leading to a car accident that resulted in Plaintiff Nieves-Rosado's severe injury and the death of Ramón Nieves-Rijos, Plaintiff Nieves-Rosado's husband and the remaining Plaintiffs' father. Docket Document No. 1. Plaintiffs aver that because of their tortious conduct, Defendants are liable under Puerto Rico's Civil Code, Articles 1802 and 1803, 31 L.P.R.A. §§ 5141-42 (1991 & Supp. 2001). Plaintiffs premise this court's jurisdiction upon diversity of citizenship under 28 U.S.C. § 1332 (1994 & Supp. 2004).

On March 31, 2005, Defendants moved for summary judgment, arguing that Plaintiffs incorrectly allege that Defendant Puerto Rico

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1 Highway Authority ("Defendant PRHA") maintains PR-137. Docket  
2 Document No. 9. Defendants aver that the Puerto Rico Department of  
3 Transportation, which is not a party to this dispute, is the sole  
4 entity responsible for PR-137's maintenance, and that summary  
5 judgment should be entered dismissing Plaintiffs' complaint in its  
6 entirety. Id.

7 In Plaintiffs' reply, filed on August 8, 2005, Plaintiffs  
8 reiterate that their complaint attributes liability based on both the  
9 negligent construction and maintenance of the PR-137 highway  
10 intersection. Docket Document No. 13. In response to Defendants'  
11 factual averments, Plaintiffs concede that Defendant PRHA is not  
12 responsible for the intersection's maintenance, and voluntarily  
13 dismiss the claim for negligent maintenance. Id. Plaintiffs  
14 maintain that Defendant PRHA was responsible for the PR-137  
15 intersection's construction, however, and that because the complaint  
16 and the evidence submitted into record clearly support a valid claim  
17 for relief under Articles 1802 and 1803, summary judgment should not  
18 be granted.

19 Based on the exiguous record before us, we are unwilling to  
20 grant summary judgment in Defendants' favor. Defendants' statement  
21 of uncontested facts indicates that maintenance responsibility for  
22 PR-137 was transferred to the Puerto Rico Department of  
23 Transportation "following a final inspection conducted on February 5,  
24 2003." Docket Document No. 10. Defendants' admission strongly  
25 suggests that the highway was constructed under Defendant PRHA's own

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1 authority. The exhibits attached to the statement of uncontested  
2 facts confirm that Defendant PRHA oversaw and approved the highway's  
3 construction. Id., Exhs. 2&3. Plaintiffs' attribution of liability  
4 is premised on Defendants' negligent oversight of the highway's  
5 construction. Consequently, based on the narrow grounds for summary  
6 judgment put forward in Defendants' motion, we cannot dismiss  
7 Plaintiffs' complaint.

8 While we are unconvinced by Defendants' argument for summary  
9 judgment, the record suggests to us that Defendant PRHA may be  
10 protected from suit by Eleventh Amendment immunity. While we do have  
11 the discretion to raise the immunity issue sua sponte, we choose not  
12 to make a determination as to immunity at this time. See Parella v.  
13 Ret. Bd. Of R.I. Employees' Ret' Sys., 173 F.3d 46, 55 (1st Cir.  
14 1999) ("[W]hile courts have the discretion to raise Eleventh Amendment  
15 questions sua sponte, Article III does not obligate them to do so.");  
16 Wis. Dep't of Corrs. v. Schacht, 524 U.S. 381, 388 (1998) ("Unless the  
17 State raises the matter [of sovereign immunity], a court can ignore  
18 it."). We find it expedient, under the present circumstances, to  
19 instruct Defendants to argue the issue of sovereign immunity at this  
20 time if they are interested in raising the defense at all. See  
21 Parella, 173 F.3d at 55 ("[T]he Eleventh Amendment is just as much a  
22 grant of immunity (i.e., a type of defense) as it is a limitation on  
23 courts' jurisdiction."). Accordingly, we grant Defendants **fifteen**  
24 **(15) calendar days** to submit a brief on the Eleventh Amendment's  
25 applicability to the present case.

